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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,168

11/25/2003

Wayne L. Pratt

2965.906US03

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07/30/2008

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EXAMINER

LEE, KEVIN L

ART UNIT

PAPER NUMBER

3753

MAIL DATE

DELIVERY MODE

07/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/722,168	<b>Applicant(s)</b> PRATT ET AL.	
	<b>Examiner</b> KEVIN L. LEE	<b>Art Unit</b> 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office action is responsive to communication filed October 9, 2007.

Applicant's amendment filed October 9, 2007 has been thoroughly reviewed and considered by the examiner. In view of applicant's cancellation of claims 25-29, the prior rejection of these claims under 35 U.S.C. 112 is now rendered moot and the rejection is therefore withdrawn. The prior indication of claims 1-24, 30 and 31 as being allowable is withdrawn in view of the following reasons:

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The Reissue Declaration filed 3/19/04 and 8/18/06 failed to properly identify at least one 35 U.S.C.251 error. It is not sufficient for an oath /declaration to merely state "In the single independent claim contained in the patent, means-plus-function limitations were used to recite the drive and operator elements of the claim. The legal scope of these means-plus-function limitations is limited by statute to the specific embodiments disclosed in the specification and structural equivalents thereof. The disclosed invention, however, does not require any specific drive or operator structure. Hence, the claims of the patent are unduly narrow, thereby rendering the patent partly inoperative in covering the full scope of the disclosed invention.". Patentees seek to obtain claims having a scope broader than the scope of the claims in the issued patent. Rather, the oath /declaration must specifically identify an error. Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. (MPEP 1414 II. (C)). The differences between the newly added claims 11-24 and 30-31 and the original claims 1-10 must be pointed out (MPEP 1414).

In addition, the lack of antecedent basis for claim 5 cannot be considered as a 251 error because it could have been corrected by Certificate of Correction.

Claims 1-24, 30 and 31 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) is needed to cover errors corrected by amendment filed Oct. 9, 2007 (up to date) (add or delete limitations in claims and add or delete claims after filing the Declaration on 3/19/04). Form paragraph 14.05.02 may be used for this matter. To cure this defect, applicant should use Form PTO/SB/51S which maybe downloaded from the USPTO website. See MPEP § 1444 for handling supplemental oaths/declarations.

The reissue claims broaden the scope of the patented claims in at least one respect even though they are narrower in other respects. MPEP § 1412.03(I). Therefore, the Supplemental Declaration must be signed by all inventors (not the assignee). MPEP § 1414.01 (III). See also *In re Hayes*, 53 USPQ 2d 1222.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN L. LEE whose telephone number is (571) 272-4915. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GREGORY HUSON can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KEVIN L LEE/  
Primary Examiner, Art Unit 3753